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§ 1422.22 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot is declared the winner. If there are no challenged ballots that would affect the results of the election, the Regional Director may declare the election a nullity and may order another election providing for a selection from among the choices afforded in the previous ballot.

(b) Only one further election pursuant to this section may be held.

PART 1423—UNFAIR LABOR PRACTICE PROCEEDINGS

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§ 1423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Board on or after February 15, 1981.

§ 1423.2 Informal proceedings.

(a) The purposes and policies of the Foreign Service Labor-Management Relations Statute can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Board and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the Board.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 22 U.S.C. 4116(d), it shall be the policy of the Board and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

§ 1423.3 Who may file charges.

The Department or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 22 U.S.C. 4115.

§ 1423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 22 U.S.C. 4115 shall be submitted on forms prescribed by the Board and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the Department or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the

section(s) and subsection(s) of chapter 41 of title 22 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Foreign Service Impasse Disputes Panel or the Foreign Service Grievance Board for consideration or action; or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to part 1424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

§ 1423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

(a) Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 1424 of this subchapter a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously.

(b) Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the appropriate Regional

Director and all parties to both the unfair labor practice case and the negotiability case.

(c) Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 1424 of this subchapter.

§ 1423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

§ 1423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The purposes and policies of the Foreign Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information

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from all potential sources during the course of the investigation. To this end, it shall be the policy of the Board and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Board's and the General Counsel's continuing ability to obtain all relevant information.

§ 1423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in §1423.6.

§ 1423.9 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of §1423.11;

(4) Issue a complaint;

(5) Upon agreement of all parties, transfer to the Board for decision, after issuance of a complaint, a stipulation of facts in accordance with the provisions of §1429.1(a) this subchapter; or

(6) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d). The General Counsel will initiate and prosecute injunctive proceedings under 22 U.S.C. 4109(d) only upon approval of the Board. A determination by the General Counsel not to seek approval of the Board for such temporary relief is final and may not be applied to the Board.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Board to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d), the Regional Attorney or other designated agent of the Board to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the United States District Court for the District of Columbia. Such tem-

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porary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the Department to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 22 U.S.C. 4109(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Board handling the case for the Board shall inform the United States District Court for the District of Columbia of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 1423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within twenty-five (25) days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party should notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than five (5) days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extension of time in which to file an appeal, but any failure to give such notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 1423.11 Settlement or adjustment of issues.

GENERAL SETTLEMENT POLICY

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

PRECOMPLAINT INFORMAL SETTLEMENTS

(b)(1) Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will afford the charging party and the respondent a reasonable period of time in which to enter into an informal settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the informal settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to an informal settlement agreement offered by the respondent, if the Re-

gional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 1423.10(c). The General Counsel shall take action on such appeal as set forth in § 1423.10(e).

POST COMPLAINT SETTLEMENT POLICY

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Board favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Board. In such formal settlement agreements, the parties shall agree to waive their right to a hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board application for the entry of a decree by the United States Court of Appeals for the District of Columbia enforcing the Board's order.

POST COMPLAINT—PREHEARING FORMAL SETTLEMENTS

(d)(1) If, after issuance of a complaint but before opening of the hearing, the charging party and the respondent enter into a formal settlement agreement, and such agreement is accepted by the Regional Director, the formal settlement agreement shall be submitted to the Board for approval.

(2) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes

that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. The charging party will be so informed and provided a brief written statement by the Regional Director of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Regional Director for other appropriate action.

POST COMPLAINT—PREHEARING INFORMAL SETTLEMENTS

(3) After the issuance of a complaint but before opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may withdraw the complaint and approve an informal settlement agreement pursuant to paragraph (b) of this section.

INFORMAL SETTLEMENTS AFTER THE OPENING OF THE HEARING

(e)(1) After issuance of a complaint and after opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve an informal settlement pursuant to paragraph (b) of this section.

FORMAL SETTLEMENTS AFTER THE OPENING OF THE HEARING

(2) If, after issuance of a complaint and after opening of the hearing, the parties enter into a formal settlement agreement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to

transmit the agreement to the Board for approval.

(3) If the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Administrative Law Judge for another appropriate action.

§ 1423.12 Issuance and contents of the complaint.

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

- (1) Notice of the charge;
- (2) Notice that a hearing will be held before an Administrative Law Judge;
- (3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;
- (4) A statement of the nature of the hearing;
- (5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated;
- (6) A reference to the particular sections of chapter 41 of title 22 of the United States Code and the rules and regulations involved; and
- (7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate

dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transmitted to the Board pursuant to § 1423.26, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transmitted to the Board pursuant to § 1423.26, upon motion by the Board at any time prior to the issuance of an order based thereon by the Board.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

§ 1423.13 Answer to the complaint; extension of time for filing; amendment.

(a) Except in extraordinary circumstances as determined by the Regional Director, within twenty (20) days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) The answer: (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Board, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written

order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the Administrative Law Judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Board.

§ 1423.14 Conduct of hearing.

(a) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

§ 1423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in § 1423.22. The motion shall state the grounds upon which such person claims involvement.

§ 1423.16 Rights of parties.

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to

examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 1423.17 Rules of evidence.

The parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by court. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

§ 1423.18 Burden of proof before the Administrative Law Judge.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 1423.19 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Subject to the rules and regulations of the Board and the General Counsel, an Administrative Law Judge presiding at a hearing may:

- (a) Grant requests for subpoenas pursuant to §1429.7 of this subchapter;
- (b) Rule upon petitions to revoke subpoenas pursuant to §1429.7 of this subchapter;
- (c) Administer oaths and affirmations;
- (d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;
- (e) Order responses to written interrogatories whenever the ends of justice would be served thereby unless it would interfere with the Board's and the General Counsel's policy of protecting the personal privacy and confidentiality of sources of information as set forth in §1423.7(d);

(f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;

(h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and transmit the decision pursuant to §1423.26;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Approve requests for withdrawal of complaints based on informal settlements occurring after the opening of the hearing pursuant to §1423.11(e)(1),

and transmit formal settlement agreements to the Board for approval pursuant to §1423.11(e) (2) and (3);

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

§ 1423.20 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

§ 1423.21 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Formal exceptions to adverse rulings are unnecessary. Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Board, and in view of §1429.11 of this subchapter, rulings by the Administrative Law Judge shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with §1423.27. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.22 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to postpone the hearing should be filed with the Chief Administrative Law Judge at least five (5) days prior to the opening of the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Board shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Board, motions and any response thereto shall be filed in writing with the Board: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Chief Administrative Law Judge.

(2) Except by special permission of the Board, and in view of §1429.11 of this subchapter, rulings by the Regional Director shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board when the case is transmitted to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transmittal of the case to the Board. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

(4) Except by special permission of the Board, and in view of §1429.11 of this subchapter, rulings by Administrative Law Judges shall not be appealed prior to the transmittal of the case to

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the Board, but shall be considered by the Board when the case is transmitted to it for decision. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.23 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

§ 1423.24 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 1423.25 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and two (2) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for additional time to file a brief shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extension of time shall be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 1423.26 Transmittal of the Administrative Law Judge's decision to the Board; exceptions.

(a) After the close of the hearing, and the receipt of brief, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and conclusions as to the

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disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Board including the judge's decision and the record. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and three (3) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Board within twenty-five (25) days after service of the decision: *Provided, however,* That the Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Board.

§ 1423.27 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's decision to which objection is made; and

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to

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comply with the foregoing requirements may be disregarded.

§ 1423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions and cross-exceptions and a supporting brief with the Board within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of the opposition to exceptions and the cross-exceptions and any supporting briefs shall be served on all other parties, and a statement of service shall be filed with the opposition to exceptions and cross-exceptions and any supporting briefs.

§ 1423.29 Action by the Board.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Board shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 1423.27, the Board may, at its discretion, adopt without discussion the decision of the Administrative Law Judge, in which event the findings and conclusions of the Administrative Law Judge, as contained in such decision shall, upon appropriate notice to the parties, automatically become the decision of the Board.

(b) Upon finding a violation, the Board shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (b) (1) through (3) of this section or such other action as will carry out the purpose of the Foreign Service Labor-Management Relations Statute.

(c) Upon finding no violation, the Board shall dismiss the complaint.

§ 1423.30 Compliance with decisions and orders of the Board.

When remedial action is ordered, the respondent shall report to the appropriate Regional Director within a specified period that the required remedial action has been effected. When the General Counsel finds that the required remedial action has not been effected, the General Counsel shall take such action as may be appropriate, including referral to the Board for enforcement.

§ 1423.31 Backpay proceedings.

After the entry of a Board order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Board and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a backpay specification accompanied by a notice of hearing or a notice of hearing without a specification. The respondent shall, within twenty (20) days after the service of a backpay specification accompanied by a notice of hearing, file an answer thereto in accordance with § 1423.13 with the Regional Director issuing such specification. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the

procedures provided in §§1423.14 to 1423.29, inclusive, shall be followed insofar as applicable.

PART 1424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Sec.

- 1424.1 Conditions governing review.
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AUTHORITY: 22 U.S.C. 4107(c).

SOURCE: 46 FR 45873, Sept. 15, 1981, unless otherwise noted.

§ 1424.1 Conditions governing review.

Pursuant to the authority contained in 22 U.S.C. 4107 (a)(3) and (c)(1) the Board will consider a direct appeal concerning whether a matter proposed to be bargained is within the obligation to bargain under the Foreign Service Act of 1980 as follows: If the Department is involved in collective bargaining with an exclusive representative and alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with applicable law, rule or regulation the exclusive representative may appeal the allegation to the Board when it disagrees with Department's allegation that the matter as proposed to be bargained is inconsistent with applicable law, rule or regulation.

§ 1424.2 Who may file a petition.

A petition for review of a negotiability issue may be filed by the exclusive representative which is a party to the negotiations.

§ 1424.3 Time limits for filing.

(a) The time limit for filing an appeal under this part is fifteen (15) days from the Department's allegation, which was requested in writing by the exclusive representative, is served on the ex-

clusive representative. The Department shall make the allegation in writing and serve a copy on the exclusive representative: *Provided, however*, That review of a negotiability issue may be requested by the exclusive representative under this part without a prior written allegation by the Department if a written allegation has not been served upon the exclusive representative within ten (10) days after the date of receipt by any Department bargaining representative at the negotiations of a written request for such allegation.

§ 1424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the matter proposed to be bargained as submitted to the Department;

(2) A copy of all pertinent material, including the Department's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(3) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under part 1423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the Secretary and on the principal Department bargaining representative at the negotiations.

§ 1424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to part 1423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other